

**G.-B. (No. 4)**

v.

**UNWTO**

**133rd Session**

**Judgment No. 4454**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr J. G.-B. against the World Tourism Organization (UNWTO) on 27 December 2019 and corrected on 14 February 2020, UNWTO's reply of 5 June, the complainant's rejoinder of 28 August and UNWTO's surrejoinder of 27 November 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant contests the decisions to reject his allegations of misconduct on the part of the Secretary-General.

Facts relevant to this case are to be found in Judgments 4452 and 4453, also delivered this day on the complainant's first and second complaints, and third complaint respectively. Suffice it to recall that the complainant was the UNWTO Director of Administration and Finance, a grade D2 position, when the new Secretary-General took office on 1 January 2018. In February, the Secretary-General informed all staff that he had decided to conduct a review of the internal control systems in relation to strategic activities with a view to ensuring their soundness and compliance with internal procedures and with the overall objective of strengthening the Organization's internal governance, and that a consultancy firm involved in the review would start its activities

straightaway. The consultancy firm found that various irregularities had been committed, and on that basis the complainant was suspended from his duties with pay on 4 May until the end of the disciplinary process. Later that month he was suspended without pay.

On 2 May the complainant wrote to the Ethics Officer alleging possible misconduct by the Secretary-General in relation to the hiring of the consultancy firm. He asked to be protected against retaliation. On 31 May he wrote a follow-up letter requesting to be provided with internal rules, in particular those relevant to ethics, to enable him to present a more detailed misconduct complaint. On 7 June he wrote a third letter providing more details about the alleged misconduct, stressing that the Secretary-General had misrepresented the facts concerning the role of the consultancy firm when he informed the Member States at the 108th session of the Executive Council. He also alleged harassment insofar as the Secretary-General had tried to force him to resign, and he asked the Ethics Officer to open an investigation on all the matters he had raised. On 8 June the Ethics Officer acknowledged receipt of the 31 May letter and sent the requested guidelines on ethics. On 11 July the complainant wrote again to the Ethics Officer referring to his earlier communications of 2 May, 31 May and 7 June and giving further examples of misconduct. On 2 August he was summarily dismissed effective 16 May.

Following the complainant's enquiry about the status of his internal complaints of misconduct, retaliation and harassment, the Ethics Officer informed him, on 21 September, that she had decided to recuse herself and that his complaints would be referred to an external entity, the United Nations Office for Project Services (UNOPS), where an independent Ethics Officer would carry out the preliminary assessment.

On 22 October the complainant wrote to the UNOPS Ethics Officer, Mr M., indicating that he wanted to file an additional harassment complaint against the Secretary-General but did not know whether it should be addressed to him or to the UNWTO Ethics Officer. He contested a comment made by the "Management" to the Joint Appeals Committee (JAC) in the context of the appeal he had filed in relation to the suspension decisions. Mr M. replied the following day that he would deal with that aspect of the complaint and had informed the UNWTO Ethics Officer accordingly.

On 29 October the UNWTO Ethics Officer notified the complainant that she had received the preliminary assessment report from Mr M. The latter rejected the request for protection from retaliation and did not recommend that the allegations be referred for investigation on the ground that the alleged retaliation actions had occurred in early May, before the Secretary-General was made aware by the complainant himself, on 21 May, that he had filed a report of misconduct against him. Regarding the allegation of harassment, Mr M. had concluded that the disciplinary process conducted with respect to the complainant's alleged misconduct was swift and unrelenting; it could be described as harsh, caused in part by what the Secretary-General seemed to have considered insubordination on his part. However, following the rules, even in a harsh way, was not harassment. Concerning the complainant's allegation that the way he was portrayed to the JAC was harassment, Mr M. had considered that it was for the JAC to decide whether such comments were justified or not. On 26 November the complainant wrote to the UNWTO Ethics Officer noting from the summary of Mr M.'s report that only some of his complaints were addressed. Hence, he asked whether he would receive an official decision on the closure of all his complaints.

Two days later, on 28 November, having received no reply from the UNWTO Ethics Officer, the complainant submitted a protest to the Secretary-General against the decisions to close his complaints and asked for clarifications as to which ones were actually closed and how the others would be handled. He also asked whether UNWTO had adopted Mr M.'s report in full and whether the provisions of Annex 2 of the Staff Regulations on appeals applied. He further asked for some guidance as to the appeal procedure he should follow. Late December 2018, the Deputy Secretary-General, acting on delegation of authority from the Secretary-General, rejected the protest indicating that if the complainant wished to appeal against that decision he should follow the procedure laid down in the Rules of the JAC. He attached a redacted copy of Mr M.'s report.

Late January 2019 the complainant initiated the internal appeal procedure with the JAC against the December 2018 decision confirming the decision of 29 October 2018 to close his complaints, and on 27 February 2019 he submitted his detailed appeal. He asked that UNWTO provide him, for comments, with a copy of the full report of Mr M., and that the JAC find that the decision to close his "ethics/harassment complaints"

was flawed. He also asked the JAC to recommend that the contested decision be set aside and the matter referred to the United Nations Joint Inspection Unit (JIU). He further asked the JAC to order UNWTO to refer to the JIU his additional claims of possible retaliation. Lastly, he claimed moral damages and legal costs.

Having heard the complainant, the JAC issued its report on 11 July 2019. It found no breach of Circular NS/768 on “Protection against retaliation for reporting misconduct or cooperating with duly authorized fact-finding activities”, or of the Staff Regulations and Rules. It added that the complainant’s claims, except those for moral damages and costs, did not fall within its competence. The claims for moral damages and costs should nevertheless be dismissed as they were a consequence of his other claims.

By a letter of 10 October 2019 the Executive Director informed the complainant that, based on the report of the JAC, he had decided to reject the appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to award him moral damages and costs. He asks the Tribunal to make its own assessment of the merits of the case instead of referring the matter back to UNWTO. However, if the Tribunal considers it inappropriate to proceed in that way, he asks that the matter be referred to the JIU for a full investigation.

UNWTO asks the Tribunal to reject the complaint as irreceivable on the grounds that the complainant does not show any cause of action, has failed to exhaust the internal means of redress or is duplicating some of the issues raised in his other complaints. Subsidiarily, it asks the Tribunal to reject the complaint as devoid of merit. It makes a counterclaim for costs on the grounds that the complaint is vexatious and amounts to an abuse of process. The complainant should bear the “full costs of the proceedings”.

## CONSIDERATIONS

1. The complainant had been the Director of Administration and Finance at UNWTO until his summary dismissal on 2 August 2018, effective 16 May 2018. Until 31 December 2017, the Secretary-General of the Organization was Mr R. On 1 January 2018 a new Secretary-General, Mr P., assumed the office.

2. The complainant seeks the joinder of this complaint with his first, second and third complaints. The joinder is opposed by UNWTO. While the facts in these complaints are part of the same continuum of events, the legal issues raised are quite discrete. Accordingly, the complaints will not be joined (see, for example, Judgment 4169, consideration 1).

3. On four occasions from May 2018 until July 2018 the complainant wrote to the UNWTO Ethics Officer raising, in various ways, allegations against the new Secretary-General involving conduct said to constitute retaliation (a matter covered by Circular NS/768), harassment and, more generally, misconduct. This correspondence culminated in an email dated 29 October 2018 from the Ethics Officer to the complainant informing him of the results of a preliminary assessment by a Mr M. of UNOPS of the complainant's allegations. The UNWTO Ethics Officer had earlier recused herself and referred those allegations to UNOPS for independent investigation. The email of 29 October 2018 mainly set out two extracts from Mr M.'s report. The first concerned the complainant's allegation of retaliation and in that extract, Mr M. said he did not recommend the complainant's request for protection against retaliation be referred for investigation. The second extract addressed the complainant's allegation of harassment and, in substance, Mr M. said he did not think that the disciplinary process against the complainant constituted harassment even though he characterised it as "swift and unrelenting". He said he also thought the way the complainant had been portrayed to the JAC was not harassment.

4. What the Ethics Officer was saying in the email, by way of identifying an outcome for the purposes of either further dealing with or disposing of the complainant's allegations, was opaque. On 26 November 2018 the complainant wrote to the Ethics Officer asking for, amongst other things, an official decision on the closure of his complaints which appeared to him to be the import of the email of 29 October 2018. On 28 November 2018 the complainant sent a letter to the Secretary-General formally protesting the decision to close certain of his complaints or potentially all of them.

5. The response to this letter came from the Deputy Secretary-General in a letter dated 27 December 2018. The letter began with a heading: “**Subject:** Ruling of the Deputy Secretary-General on the Protest against the decision to close complaints made to the Ethics Officer”. Plainly the Deputy Secretary-General was proceeding on the basis that there had been an administrative decision to close the case, and thus finalise the consideration of the allegations made by the complainant in his letters from May 2018 until September 2018. After some introductory comments, the Deputy Secretary-General said he had been conferred with power by the Secretary-General “to issue a ruling on [his] protest”. Nine numbered paragraphs then followed addressing aspects of the complainant’s claims both procedurally and substantively. The eighth numbered paragraph was conclusory in that the Deputy Secretary-General said: “[t]herefore, not a single justification would warrant a second review of your baseless allegations be made”. The concluding paragraph told the complainant that, in substance, he could appeal against this ruling to the JAC. Viewing the letter in its entirety, it constituted a rejection of the complainant’s protest against the administrative decision to close the case, and thus finalise the consideration of his allegations of harassment and retaliation.

6. On 27 January 2019, the complainant sent the JAC a notice of appeal in the form of a letter. On 27 February 2019 the complainant sent the JAC a memorandum containing detailed argument mainly in a section of the memorandum called Attachment VII which contained, in substance, the complainant’s pleas. The concluding paragraph, paragraph 83, of Attachment VII set out the relief sought in four sub-paragraphs, (a) to (d). Subparagraph (b) requested that the JAC recommend that the decision “to close [his] ethics/harassment complaints” be set aside and that the matter be referred to the JIU for further processing.

7. Before considering the approach taken by the JAC in this case, it is convenient to recall what the Tribunal has repeatedly said about the role of internal appeal bodies. It is discussed in the following passage from Judgment 3732, consideration 2, which, though lengthy, bears repeating:

“According to the Tribunal’s case law, ‘the right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority (see, for example, [...] Judgments 2781, under 15, and 3067, under 20). This is especially true since internal appeal bodies may normally allow an appeal on grounds of fairness or advisability, whereas the Tribunal must essentially give a ruling on points of law. [...] [T]he review of a disputed decision in an internal appeal procedure may well suffice to resolve a dispute, one of the main justifications for the mandatory nature of such a procedure is to enable the Tribunal, in the event that a complaint is ultimately lodged, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies, especially those whose membership includes representatives of both staff and management, as is often the case (see, for example, Judgments 1141, under 17, or 2811, under 11). [...] [T]he Appeal Board plays a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from its composition, its extensive knowledge of the functioning of the organisation and the broad investigative powers granted to it. By conducting hearings and investigative measures, it gathers the evidence and testimonies that are necessary in order to establish the facts, as well as the data needed for an informed assessment thereof.’ (See Judgment 3424, considerations 11(a) and (b).)”

8. In this case, the JAC described in its “Conclusions” firstly what it would not deal with, which is unnecessary to refer to in detail. It then said that it had “found no breach made to Circular NS/768 or to the Staff Regulations and Rules in the allegations made by the [complainant]”. What this means is entirely obscure. It then referred in its conclusions to the claims described in consideration 6 above and set out Rule 5(a) of the Rules of the JAC which provided:

“The [JAC] shall consider appeals against administrative decisions or against any disciplinary action where an official alleges that it conflicts either in substance or in form with the terms of his contract, or with any Staff Regulation or Staff Rule relevant to his case.”

9. The JAC then said “[t]he paragraph 83 presents four pleas, of which pleas a, b and c are not falling within the JAC’s competence”. No reasons are provided for this conclusion.

10. The relevant legal and factual question raised by the appeal was whether the Ethics Officer erred in deciding, amongst other things, after a preliminary assessment of the request for protection against retaliation and the allegation of harassment, that there was no *prima facie* case which would call for a formal investigation and thus the complaints

could be closed and finalised. There was no justification for the conclusion of the JAC that it was not competent to deal with what it described as the four pleas in paragraph 83. In particular, paragraph 83(b) raised for consideration whether the administrative decision to close the complaints was lawful. The JAC was competent to consider that issue and should have.

11. It is now convenient to deal with one preliminary issue raised by the pleas. In its pleas UNWTO challenges the receivability of the complaint on the basis that there was no relevant administrative decision by the Ethics Officer. At least implicitly there was (see, for example, Judgment 3747, consideration 5), and it involved a determination that there had been no harassment or retaliation, which was manifest by the decision to close, and thus finalise, the complaints.

12. In some circumstances where an internal appeal body has failed to fulfil its role, the impugned decision taken on the basis of its report (in this case the decision of the Deputy Secretary-General of 10 October 2019 dismissing the appeal) is set aside and the matter remitted to the organisation in order for a differently constituted appeals body to consider the appeal afresh. That approach does not commend itself in this case. The events the subject of the complaint occurred over three years ago. The complainant is no longer employed by UNWTO. While not determinative of the final outcome (and certainly not relevant to the question of whether the JAC fulfilled its role), the Tribunal cannot entirely ignore the view of Mr M., which appears to be to the effect there had been no retaliation or harassment.

13. The complainant is entitled to moral damages for the failure of the JAC to perform its role and determine, according to law, the complainant's appeal with the result that his challenge to the closure of the complaints remains unresolved in its entirety. Those damages are assessed in the sum of 10,000 euros. The complainant is entitled to costs in the sum of 8,000 euros.

14. In light of the above UNWTO's counterclaim for costs is rejected.

#### DECISION

For the above reasons,

1. UNWTO shall pay the complainant 10,000 euros moral damages.
2. UNWTO shall pay the complainant 8,000 euros costs
3. All other claims are dismissed, as is the counterclaim for costs.

In witness of this judgment, adopted on 28 October 2021, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ